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Cases, Regulations, and Statutes

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corporations with assets of $1 billion or more due in July, August and September of 2012 from 106.25 percent to 114.25 percent of the amount otherwise due. **Act § 8248, amending § 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005.**

Increase in penalties

The legislation increases various penalties –

(1) Penalties for bad checks and money orders. **Act § 8245, amending I.R.C. § 6657.**

(2) Extending penalties to *all* tax return preparers, not just income tax return preparers. **Act § 8246, amending I.R.C. §§ 7701(a)(36), 6103(k)(5), 6107, 6109(a)(4), 6503(k)(4), 6694, 6695, 6696(e), 7407, 7427.**

(3) A penalty equal to 20 percent of the excessive amount of the earned income credit (unless the excessive amount has a reasonable basis). **Act § 8247, adding I.R.C. § 6676.**

FOOTNOTES

[1] H.R. 2206, 110th Cong., 1st Sess. 2007. The tax legislation was part of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. Earlier versions of the legislation had been vetoed by the president.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

PLAN. The debtors, husband and wife, operated a farming and custom harvesting business. The wife also began employment off the farm. The debtors submitted a Chapter 12 plan based on projections of income from the three activities and the value of farm equipment which secured several loans from one creditor. The debtors' projected sufficient income to fund the plan, although the farm and harvesting operations had not shown a profit in the previous two years. The debtors argued that the income in those two years was artificially low because of poor weather conditions. In addition, the debtors had additional income now because of the wife's employment. The creditor objected to the plan as unfeasible but the court rejected the opinions of the creditor's accountant as lacking in expertise concerning farming. The court noted that the plan provided for immediate dismissal of the case if any plan payment is not made on time. The court also noted that the creditor had sufficient collateral to protect the lien during the plan and that the debtor kept the equipment in good working order. The court approved the plan, although noting that any projections were risky. ***In re* Hermesh Entities, Inc., 2007 Bankr. LEXIS 900 (Bankr. E.D. Okla. 2007)**.

FEDERAL TAX

ADMINSTIRATIVE EXPENSES. The IRS has filed a Chief Counsel Advice Memorandum in agreement with the holding in the following case. The memorandum recommends revising IRS Pub. 908, Bankruptcy Tax Guide, to reflect the holding in this case. The debtor's Chapter 7 estate incurred administrative expenses during the administration of the estate. The trustee filed an income tax return for the estate and claimed the administrative expenses as a deduction from gross income of the estate, resulting in no income tax owed by the estate. The IRS disallowed the deduction except as a miscellaneous deduction, limited to the amount in excess of 2 percent of gross income. The IRS argued that, because the debtor would not be allowed a deduction from gross income for bankruptcy administrative expenses, the bankruptcy estate should not be allowed such a deduction. The court held that I.R.C. § 1398(h)(1) specifically allows bankruptcy estates deductions not otherwise disallowed. The court then looked to I.R.C. § 67 which allows estates and trusts to deduct administrative expenses from income. The court held that I.R.C. § 67 applied to bankruptcy estates. A similar case, *In re Sturgill, 217 B.R. 291 (Bankr. D. Or. 1998)*, held that bankruptcy administrative expenses were not deductible as trade or business expenses. The court noted that I.R.C. § 67 was not raised or discussed in that case. *In re Miller, 252 B.R. 110 (Bankr. E.D. Tax. 2000)*. The next issue of the *Digest* will publish an article by Neil Harl on this issue. **IRS Advice Memorandum, AM 2007-010**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has issued proposed regulations which amend the common crop insurance regulations by removing the quota tobacco crop insurance provisions, revising the guaranteed tobacco crop insurance provisions, and changing the title of the guaranteed tobacco crop insurance provisions to Contracted Tobacco Crop Insurance Provisions. **72 Fed. Reg. 28895 (May 23, 2007)**.

FOOD SAFETY. The FSIS has issued a notice to articulate its position on the slaughter for human food of hogs and chickens from farms identified as having purchased or otherwise received pet food scraps that contain melamine and melamine-related compounds. The contaminated pet food scraps were used to supplement animal feed on farms in several states. The FSIS reported that the results of an interim safety/risk assessment indicate that, based on currently available data and information, the consumption of pork, poultry, eggs, and domestic fish products from animals inadvertently fed animal feed contaminated with melamine and melamine-related compounds is very unlikely to pose a human health risk. Based on the findings of the interim safety/risk assessment, as well as the results of validated testing for melamine concentration that has been conducted on tissue samples of hogs and chickens exposed to the adulterated feed, FSIS has determined that pork and poultry products from all animals identified as having been fed animal feed containing contaminated pet food scraps are "not adulterated" and are thus eligible to receive the mark of inspection. All such animals that were being held on farms have been released and may be offered for slaughter for human food. **72 Fed. Reg. 29945 (May 30, 2007)**.

ENVIRONMENTAL LAW

CLEAN WATER ACT. The defendants were cited for violation of the Clean Water Act for filling wetlands. The defendant argued that the wetlands were not under the jurisdiction of the CWA because the wetlands were not "waters of the United States" as defined by the CWA. The case had been remanded to the trial court for a determination using the holding of *Rapanos v. United States, 126 S.Ct. 2208 (2006)*. The court examined *Rapanos* for the proper standard to be applied and held that a wetland would meet the definition of waters of the United States if the wetland met either the plurality decision or the Justice Kennedy standard of *Rapanos*. The court then proceeded to determine whether the defendant's wetlands met either standard. The court held that the wetlands were waters of the United States under the plurality standard in that the wetlands had a continuous surface connection with nearby waters of the United States, noting that the wetlands had a significant impact on the water flow and quality of the nearby creeks. The court also held that the wetlands were waters of the United States under the Justice Kennedy standard in that the wetlands had a significant nexus to the creeks in providing ecological improvement functions for the creeks. The court held that the defendant's wetlands were subject to the jurisdiction of the CWA as waters of the United States. **United States v. Cundiff, 2007 U.S. Dist. LEXIS 22832 (W.D. Ky. 2007)**.

FEDERAL ESTATE AND GIFT TAXATION

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's estate filed a timely Form 4768 to request an extension of time to file the estate tax return. The estate tax return was filed more than nine months after the death of the decedent and included an election to pay the estate tax in installments. I.R.C. § 6166(d) requires the election to be made within nine months after the death of the decedent. The IRS stated that no regulation sets the date for the election; therefore, no waiver or extension of time to file the election can be granted because the regulation governing waivers and extensions, Treas. Reg. § 301.9100-3, does not apply to statutory time limitations. **Ltr. Rul. 200721006, Feb. 14, 2007**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer claimed deductions for business expenses related to a real estate investment business, including advertising, car expenses, depreciation, interest, office expenses, supplies and travel. The taxpayer presented only a spreadsheet of the expenses and credit card statements showing the various expenses as charges. The evidence presented by the taxpayer included the date, purpose and amount of the expense but the taxpayer did not present any receipts or other documentary evidence to support each expense. The court held that the deductions were properly disallowed for lack of substantiation. **Alemasov v. Comm'r, T.C. Memo. 2007-130**.

COOPERATIVES. The taxpayer was an electric cooperative tax-exempt under I.R.C. § 501(c)(12). The taxpayer had unredeemed patronage capital credits which normally were retired over 20 years. The taxpayer amended its bylaws to allow accelerated redemption of the credits at a discount. The IRS ruled that the amendment did not cause the taxpayer to lose its exempt status because the amendment of the bylaws met the requirements of an exempt cooperative, specifically (1) democratic control, since the redemption of capital at a discount did not affect member voting or governing rights; (2) operation at cost, since the members' right to receive the excess (capital credits) over the cost of electric service was not adversely affected; and (3) subordination of capital, since the redemption program did not adversely affect the members' control and ownership of cooperative assets. **Ltr. Rul. 200721021, March 2, 2007; Ltr. Rul. 200721020, March 2, 2007**.

COURT AWARDS AND SETTLEMENTS. The taxpayer was employed with a roofing company and filed a suit against the employer after being fired for violation of the Michigan Whistleblower's Protection Act. The suit was submitted for mediation and the employer paid $80,000 in settlement of the litigation. The taxpayer excluded the proceeds from taxable income, arguing that the money was compensation for personal injuries. The court noted that the taxpayer did not incur any medical expenses, consult with a medical professional or inform the employer of any physical injuries. The court held that the settlement proceeds were included in taxable income because the proceeds were not received as compensation for personal injuries. **MacMurray v. Comm'r, T.C. Summary Op. 2007-90**.

DISABILITY PAYMENTS. The taxpayer contracted diabetes while employed and the disease eventually forced the taxpayer to retire. The taxpayer received disability retirement benefits under a plan provided by the former employer. The payments were not determined by the amount of medical costs incurred by the taxpayer but were primarily based on the taxpayer's length of employment and the employment position and pay when the taxpayer retired. The court held that the payments were included in taxable income to the extent the payments were based on the length of employment and employment position when the retirement occurred. The court noted that the taxpayer had applied for a recharacterization of the payments by the state but the state had not yet ruled on that request. No discussion was included as to the effect of a change by the state of the character of the payments. **Woehl v. Comm'r, T.C. Summary Op. 2007-87**.

DISASTER LOSSES. On May 11, 2007, the president determined that certain areas in Connecticut are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding, which began on April 15, 2007. **FEMA-1700-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2006 returns.

ELECTRICITY PRODUCTION CREDIT. The IRS has announced the 2007 inflation adjustment factor (1.3433) and reference price used in determining the availability of the renewable electricity production credit to taxpayers producing electricity using wind at 3.29 cents per kilowatt hour. The inflation adjustment factor and reference prices apply to calendar year 2007 sales of kilowatt hours of electricity produced in the U.S. and its possessions from qualified energy resources. The renewable electricity production credit for calendar year 2007 is 2.0 cents per kilowatt hour on sales of electricity produced from wind energy, closed-loop biomass, geothermal energy and solar energy and 1.0 cent per kilowatt hour on sales of electricity produced from open-loop biomass, small irrigation power, landfill gas and trash combustion facilities. **Notice 2007-40, 2007-1 C.B. 1284**.

EMPLOYMENT TAXES. The taxpayer was employed as a seamstress during 2003 and was paid wages as an independent contractor, with the employer not withholding any taxes from the taxpayer's income. The taxpayer did not file a federal income tax return for 2003 and the IRS made an assessment based on a substitute return. The parties agreed that the taxpayer was actually an employee of the employer and the employer should have withheld employment taxes. The taxpayer argued that, because the employer failed to withhold taxes, the employer was liable for the unpaid taxes and not the taxpayer. The court held that the employer's failure to withhold taxes subjected the employer only to liability for the I.R.C. § 3509 tax but the Section 3509 tax did not affect the taxpayer's liability for the tax on the taxpayer's wages. **Escandon v. Comm'r, T.C. Memo. 2007-128**.

HYBRID VEHICLE TAX CREDIT. Effective for vehicles placed in service after December 31, 2005, an alternative motor vehicle credit is allowed which is the sum of (1) qualified fuel cell motor vehicle credit, (2) advanced lean burn technology motor vehicle credit, (3) qualified hybrid motor vehicle credit, and (4) qualified alternative fuel motor vehicle credit. I.R.C. § 30B(a). The credit is phased out when a manufacturer sells its 60,000 hybrid vehicle. The IRS has announced that Ford Motor Company has not yet sold its 60,000th vehicle; therefore, their certified vehicles remain eligible for the credit.

2008 Ford Escape 2WD Hybrid	$3,000
2005, 06, 07 Ford Escape 2WD Hybrid	$2,600
2008 Ford Escape Hybrid 4WD	$2,200
2005, 06, 07 Ford Escape 4WD Hybrid	$1,950
2008 Mercury Mariner 4WD Hybrid	$2,200
2005, 06, 07 Mercury Mariner 4WD Hybrid	$1,950
2008 Mercury Mariner 2WD Hybrid	$3,000

See also Harl, "Additional Items in the Energy Policy Act of 2005, 16 *Agric. L. Dig*. 131 (2005). **IR-2007-108**.

IRA. The taxpayer owned an IRA and began receiving annual distributions based on the fixed annuity method described in *Notice 98-25, 1989-1 C.B. 662*. In a subsequent year, the taxpayer had a portion of the funds in the IRA transferred to a new IRA owned by the taxpayer. The IRS ruled that the transfer of funds constituted a modification of the series of distributions, resulting in imposition of the 10 percent penalty under I.R.C. § 72(t)(1). **Ltr. Rul. 200720023, Feb. 21, 2007**.

INSTALLMENT REPORTING. The taxpayer owned a 12 percent interest in a limited liability company and sold that interest in 2000 for a lump sum of $631,590 and a promissory note for the remainder of the sales price. The sales price was $1,138,806. The taxpayer included in income as capital gain only the lump sum payment and the monthly payments received in the first tax year. The taxpayer did not file Form 6252, Installment Sale Income and the IRS argued that the taxpayer opted out of the installment method of reporting the gain by reporting all of the income in the first year. The court found that the reported gain was less than the total gain from the sale of the LLC interest; therefore, the taxpayer did not elect out of the installment method. The court noted that the only way to elect out of the installment method was to report all of the gain in the tax year of the sale. **Moore v. Comm'r, T.C. Memo. 2007-134**.

LIKE-KIND EXCHANGES. The taxpayers, husband and wife, owned a vacation home in addition to their main residence. The vacation home was not rented to unrelated parties but the taxpayers hoped the house would appreciate during ownership. The taxpayer moved their primary residence and decided to obtain a closer vacation home. The taxpayers entered into a series of transactions intended to qualify as a tax-free, like-kind exchange with a qualified intermediary. The court held that the exchange was not entitled to I.R.C. § 1031 treatment because neither property was held for use in a trade or business or for investment. **Moore v. Comm'r, T.C. Memo. 2007-134**.

LIMITED LIABILITY COMPANY. The taxpayer owned a 12 percent interest in a limited liability company which operated a medical office. The main issue was the date of the transfer of the interest to the taxpayer. A written agreement of the transfer was dated in 2000 but the agreement stated that it merely formalized an oral agreement in 1997. The evidence showed that the taxpayer had been receiving 12 percent of the distributions and tax items from the LLC since 1997; therefore, the court held that the taxpayer had to include those items in taxable income after 1997. **Moore v. Comm'r, T.C. Memo. 2007-134**.

LODGING EXPENSES. The IRS has issued interim guidance, pending amendment of Treas. Reg. § 1.262-1(b)(5), as to the deductibility of lodging expenses incurred while traveling away from home. Under the existing regulations, lodging expenses are not deductible unless they qualify for a deduction under I.R.C. § 217. The new rule will allow deduction of lodging expenses if the expenses are deductible under I.R.C. §§ 162 or 217. The IRS will not apply Treas. Reg. § 1.262-1(b)(5) to expenses for lodging of an employee not incurred while the employee is traveling away from home that an employer provides to the employee, or requires the employee to obtain, under the following conditions: (1) the lodging is on a temporary basis; (2) the lodging is necessary for the employee to participate in or be available for a bona fide business meeting or function of the employer; and (3) the expenses are otherwise deductible by the employee, or would be deductible if paid by the employee, under I.R.C. § 162(a). This issue will not be raised in any taxable year ending on or before publication of the guidance and, if already raised as an issue in examination or before the Office of Appeals or the Tax Court in a taxable year ending on or before May 23, 2007, the issue will not be pursued by the IRS. **Notice 2007-47, I.R.B. 2007-24**.

MORTGAGE INTEREST. The taxpayer founded and operated an organization to house and support abandoned animals. The taxpayer took out several mortgages on the taxpayer's residence to finance the organization's operations. The taxpayer claimed mortgage interest deductions and charitable deductions based on the loans. The taxpayer failed to provide any substantiation for the expenses or how they would qualify for the deduction. The court held that the deductions were properly disallowed because the taxpayer did not substantiate the expenses with adequate records. **Duncan v. Comm'r, T.C. Summary Op. 2007-89**.

PARTNERSHIPS

BASIS ELECTION. The taxpayer partnership owned an interest in another partnership, a limited liability company. One of the taxpayer's partner's died and the taxpayer filed an election to adjust its partnership basis under I.R.C. § 754 but the LLC inadvertently failed to make the election. The IRS granted an extension of time for the LLC to file an amended return with the election. **Ltr. Rul. 200721005, Feb. 8, 2007**.

DISTRIBUTIVE SHARE. The taxpayer was a lawyer and tax return preparer who formed a partnership with another attorney. The partners had several disagreements over the allocation of partnership profits and agreed to place all partnership income in escrow until their dispute could be settled. The other partner filed the partnership income tax return and submitted a Form K-1 for the taxpayer, showing the taxpayer's distributive share of partnership income and other tax items. The taxpayer did not include the Form K-1 share as income on the taxpayer's personal income tax return, arguing that the funds were in escrow and could not be reached by the taxpayer. The court held that the taxpayer's access to the funds was not relevant to the taxpayer's liability for tax on the taxpayer's distributive share of partnership income; therefore, the Form K-1 amount was included in the taxpayer's taxable income. **Burke v. Comm'r, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,497 (1st Cir. 2007), *aff'g*, T.C. Memo. 2005-297**.

PENSION PLANS. For plans beginning in May 2007 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities rate for this period is 4.87 percent, the corporate bond weighted average is 5.80 percent, and the 90 percent to 100 percent permissible range is 5.22 percent to 5.80 percent. **Notice 2007-33, I.R.B. 2007-21**.

The IRS has adopted as final regulations which provide rules permitting distributions to be made from a pension plan upon the attainment of normal retirement age prior to a participant's severance from employment with the employer maintaining the plan. **72 Fed. Reg. 28604 (May 22, 2007)**.

The IRS has issued proposed regulations providing mortality tables to be used in determining present value or making any computation for purposes of applying certain pension funding requirements. **72 Fed. Reg. 29456 (May 29, 2007)**.

The IRS has announced that a I.R.C. § 401(k)(12) plan will not fail to satisfy the requirements for a safe harbor plan due to mid-year amendments to implement recent changes to the rules for I.R.C. § 401(k)(12) safe harbor plans, such as a qualified Roth contribution program, as defined in I.R.C. § 402A, or the hardship withdrawals described in *Notice 2007-7, 2007-1 C.B. 395*. This announcement was made to allay concerns expressed by some employers with regard to making mid-year amendments to their I.R.C. § 401(k)(12) safe harbor plans. **Ann. 2007-59, I.R.B. 2007-25**.

PROPERTY TAXES. The taxpayer was a real property developer which contracted with a public housing authority to construct and develop a housing development. The development property was not subject to property taxes but the taxpayer was required to make payments to the public authority equal to the taxes which would have been assessed on the property. When the properties were leased to tenants, the tenants would make these payments in lieu of taxes (PILOT). The PILOT funds were used by the public authority for covering costs associated with the development of the property. The IRS ruled that the PILOT payments were deductible under I.R.C. § 164 as real property taxes. **Ltr. Rul. 200720016, Feb. 12, 2007.**

The taxpayer was entitled to a rebate on real property taxes paid under an exemption provided by state law. The could be applied to the current year's property taxes or, in some cases, applied to property taxes paid in prior years. The IRS ruled that the rebate paid in the current year was not included in gross income but merely reduced the available deduction for real property taxes, except to the extent the rebate exceeded the taxes paid in the current year. If the rebate exceeded the taxes paid, the excess was taxable income. If the rebate applies to previous year property taxes already paid, the same result applies; the rebate reduces the current year's property tax deduction and the excess is taxable income. The IRS also ruled that the state was not required to report to the IRS payment of the rebates. **Ltr. Rul. 200721017, Feb. 8, 2007**.

RETURNS. The IRS has posted drafts of the following forms to the IRS Website in the Topics for Tax Professionals section (http://www.irs.gov/taxpros/topic/index.html) under Draft Tax Forms: Form W-7P (Rev. August 2007), Application for Preparer

Tax Identification Number; Form 1040, Schedule F (2007), Profit or Loss From Farming; and Form 1040, Schedule R (2007), Credit for the Elderly or the Disabled. Advance proof copies of IRS tax forms are subject to change and Office of Management and Budget approval before they are officially released.

The IRS has awarded $8 million in matching grants to nonprofit organizations and academic institutions under the Low Income Taxpayer Clinic (LITC) grant program. LITCs represent low-income taxpayers involved in tax disputes with the IRS and assist taxpayers for whom English is a second language or who have limited English proficiency in understanding their tax rights and responsibilities. **IR-2007-102**.

INSURANCE

COVERAGE. The plaintiff ordered cattle feed which was delivered by one of the defendants. The plaintiff alleged that the defendant had failed to properly clean the trailer before loading the cattle feed and that some aluminum fragments were mixed into the cattle feed, causing damage to the plaintiff's cattle when it ate the feed. The defendant sought to recover any damages from its liability insurance company. The insurance company refused to agree to pay any damages which might be awarded because the insurance policy excluded coverage of damages caused by the discharge of pollutants by the defendant trucking company. The plaintiff and trucking company argued that the policy was ambiguous in its definition of pollutant and that aluminum fragments were not a pollutant. The court found that the pollutant exclusion in the policy was clear and unambiguous and was broad enough to cover aluminum fragments which were negligently mixed in with the cattle feed. The court granted summary judgment to the insurance company relieving it of any liability for damages that could be awarded to the plaintiff. **Judd Ranch, Inc. v. Glaser Trucking Service, Inc., 2007 U.S. Dist. LEXIS 37628 (D. Kan. 2007)**.

TRAILER. The plaintiff was injured during a "hay ride" on a farm when the wagon ran over the plaintiff's foot. The plaintiff sued the defendant insurance company after the insurance company denied coverage because the farm wagon was not a trailer as defined in the insurance policy. The policy provided a definition of trailer as something that could be towed behind an automobile or pickup. The farm wagon was being pulled by a tractor and the defendant argued that the tractor pulled wagon did not meet the policy definition of trailer. The court examined the photographs of the wagon and noted that the wagon had no lights, fenders, fender guards or flaps; therefore, the wagon was not suited for towing by an automobile or pickup on the highway and was not a trailer as defined by the policy. **Carter v. Concord General Mutual Ins. Co., 2007 N.H. LEXIS 87 (N.H. 2007)**.

NEGLIGENCE

DAMAGES. The plaintiff sued the defendant in negligence for damages to crops, pasture, fences and windbreaks caused by a fire started by an employee of the defendant. The trial court granted summary judgment for the plaintiff but limited the amount of damages to the difference in value of the land before and after the fire. The plaintiff argued that the damages should have been measured by the cost of restoring the land to the condition it was in before the fire. The court noted that the measure of damages depended upon the use of the land at the time of the fire. Replacement value was appropriate for land used for residential or recreational purposes and loss of value was appropriate for farm or business use. Because the trial court did not make any findings as to the use of the land, the appellate court remanded the case for such a determination and the resulting proper damages calculation. **Spicer Ranch v. Schilke, 2007 Neb. App. LEXIS 93 (Neb. Ct. App. 2007)**.

STATE REGULATION OF AGRICULTURE

CONCENTRATED ANIMAL FEEDING FACILITY. The plaintiffs were neighboring landowners who objected to the issuance of permits for the defendant to install and operate a dairy concentrated animal feeding facility. The plaintiffs challenged the granting of the permits on technical grounds, that the defendant's facility did not comply with the environmental laws and regulations. The court rejected the arguments, finding that the state had adequately examined the proposed facility for compliance with the permit laws and regulations. **Citizens Against Megafarm Dairy Development, Inc. v. Dailey, 2007 Ohio App. LEXIS 2447 (Ohio Ct. App. 2007)**.

ZONING

AGRICULTURAL USE. The defendant operated a 924 acre farm and grew primarily row crops. The defendant used 55 acres to grow market vegetables, flowers and decorative plants. The defendant sold the non-row crops at a market located on the highway which passed by the farm. The township zoning inspector filed suit to abate the market as violating the zoning code because more than 50 percent of the gross income from the market came from the sale of goods not produced on the farm. The court noted that the trial court had conflicting evidence as to the percentage of sales from farm produce and had made a determination based on substantial facts that more than 50 percent of the gross income came from non-farm items; therefore, the appellate court refused to overturn the trial court's fact determination and upheld the ruling that the market violated the zoning law governing the farm. **Tillman v. Watson, 2007 Ohio App. LEXIS 2245 (Ohio Ct. App. 2007)**.

Agricultural Law Press
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The Seminars in Paradise have returned!

FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

Outrigger Keauhou Beach Resort, Big Island, Hawai'i. January 8-12, 2008

Spend a week in Hawai'i in January 2008! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 8-12, 2008 at the spectacular ocean-front Outrigger Keauhou Beach Resort on Keauhou Bay, 12 miles south of the Kona International Airport on the Big Island, Hawai'i.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Tuesday through Saturday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400+ page seminar manual *Farm Income Tax: Annotated Materials* and the 600+ page seminar manual, *Farm Estate and Business Planning: Annotated Materials,* both of which will be updated just prior to the seminar.

Here are a sample of the major topics to be covered:

• Farm income items and deductions; losses; like-kind exchanges; and taxation of debt including the new Chapter 12 bankruptcy tax.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

• Introduction to estate and business planning.

• Co-ownership of property, including discounts, taxation and special problems.

• Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.

• Organizing the farm business—one entity or two, corporations, general and limited partnerships and limited liability companies.

The Agricultural Law Press has made arrangements for **substantial discounts on partial ocean view hotel rooms at the Outrigger Keauhou Beach Resort**, the site of the seminar.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest,* the *Agricultural Law Manual* or the *Principles of Agricultural Law*. The registration fee for nonsubscribers is $695. Brochures will be sent to all subscribers soon. For more information call Robert Achenbach at 541-302-1958 or e-mail at robert@agrilawpress.com.